

SENATE BILL NO. 351  
INTRODUCED BY J. ESSMANN

EXHIBIT 2  
DATE 3-18-09  
SB 351

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MORTGAGE LENDING LAWS; EXPANDING THE MORTGAGE BROKER AND LOAN ORIGINATOR ACT TO INCLUDE MORTGAGE LENDERS; IMPLEMENTING PROVISIONS OF THE FEDERAL SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 WITH RESPECT TO MORTGAGE BROKERS, MORTGAGE LENDERS, AND MORTGAGE LOAN ORIGINATORS; PROVIDING FOR A REGISTERED AGENT FOR MORTGAGE BROKERS AND MORTGAGE LENDERS WITHOUT AN IN-STATE OFFICE; REPEALING THE MONTANA RESIDENTIAL MORTGAGE LENDER LICENSING ACT; AMENDING SECTIONS 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-108, 32-9-109, 32-9-110, 32-9-115, 32-9-116, 32-9-117, 32-9-118, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-126, 32-9-130, AND 32-9-133, MCA; REPEALING SECTIONS 32-9-119, 32-10-101, 32-10-102, 32-10-103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, AND 32-10-515, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 32-9-101, MCA, is amended to read:

**"32-9-101. Short title and purpose.** (1) This part may be cited as the "Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act".

(2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license certain persons in the residential mortgage industry that are outside of the traditional banking industry and that have a direct involvement in consumers' financial welfare, including mortgage brokers, mortgage lenders, and mortgage loan originators, to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the stability of Montana's economy.

(3) The legislature finds that it is necessary to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and, together with the residential mortgage industry, recognizes the

importance of statewide participation in the nationwide mortgage licensing system and registry."

**Section 2.** Section 32-9-102, MCA, is amended to read:

**"32-9-102. License requirement -- registration.** (1) Unless exempt under 32-9-104, a person may not act as a mortgage broker, mortgage lender, or mortgage loan originator with respect to any residential real estate located in Montana unless licensed under the provisions of this part.

(2) Any person acting as a mortgage broker, mortgage lender or mortgage loan originator under this part or is required to be licensed and registered with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry by the date set forth in 32-9-108(3).

**Section 3.** Section 32-9-103, MCA, is amended to read:

**"32-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) "Approved education course" means any course approved by the nationwide mortgage licensing system and registry.

(3) "Approved test provider" means any test provider approved by the national mortgage licensing system and registry.

(4) "Bona fide third party" means a person or entity that provides services relative to residential mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(5) "Borrower" means a person seeking a residential mortgage loan.

(6) "Branch office" means a location other than a licensee's principal place of business.

(7) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise. A person is presumed to control an entity if that person:

(a) is a director, general partner, or executive officer;

(b) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(c) in the case of a limited liability company, is a managing member; or

(d) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

(8) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(9) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

(10) "Designated manager" means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.

(11) "Entity" means a business organization, including a sole proprietorship.

(12) "Escrow account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage lender and that is maintained solely for the holding and payment of escrow funds.

(13) "Escrow funds" means money entrusted to a mortgage lender by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

(14) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

(15) "Immediate family member" means a spouse, child, sibling, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.

(16) "Independent contractor" means a person certified as an independent contractor pursuant to 39-71-417.

(17) "Individual" means a natural person.

(18) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

(19) "Loan commitment" means a statement transmitted in writing or electronically transmitted by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

(20) "Loan processor or underwriter" means an individual who performs administrative or clerical tasks as an employee, subsequent to the receipt of a residential mortgage loan application at the director of

and subject to the supervision of a licensee or a person exempt from licensure under 32-9-104.

(21) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

(22) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a residential mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration. For purposes of this subsection (22), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a mortgage lender on behalf of a borrower.

(23) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.

(24) (a) "Mortgage loan originator" means an individual who is for compensation or gain or in the expectation of compensation or gain:

- (i) takes a residential mortgage loan application; or
- (ii) offers or negotiates terms of a residential mortgage loan.

(b) The term does not include an individual:

- (i) engaged solely as a loan processor or underwriter, except as provided in [section5];
- (ii) who performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301, unless the person is compensated by a mortgage lender, a mortgage broker, a mortgage loan originator, or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or
- (iii) solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 1201(53D).

(25) "Mortgage Service Loss Mitigation Specialist" means a person who on behalf of the person making the residential mortgage loan works with a borrower who is in default or in a foreseeable likelihood of a default to modify or refinance either temporarily or permanently the borrower's obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.

(26) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration of persons that originate residential mortgage loans, including state-licensed mortgage brokers, state-licensed mortgage lenders, state licensed mortgage loan originators and registered mortgage loan originators.

(27) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

(28) "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

(29) "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction; or

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in an activity, or act in any capacity described in subsections (29) (a) through (29) (d).

(30) "Registered mortgage loan originator" means an individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the federal farm credit administration; and

(b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

(31) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103 (v) of the Truth in Lending Act, 12 CFR 226.2, or on residential real estate located in Montana.

(32) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(B)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has

submitted a written, signed statement to the contrary.

(33) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker and that is maintained solely for the holding and payment of bona fide third-party fees.

(34) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

(35) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry."

**Section 4.** Section 32-9-104, MCA, is amended to read:

**"32-9-104. Exemptions -- proof of exemption.** (1) The provisions of this part do not apply to the individuals or entities listed below:

- (a) an entity that is an agency of the Federal, state or municipal government;
- (b) an entity described in 32-9-103 (30) (a)(i), (a)(ii) or (a)(iii);
- (c) a registered mortgage loan originator when acting for an entity described in 32-9-103(30)(a)(i) through (30)(a)(iii);
- (d) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual;
- (e) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;
- (f) a loan that is made by an entity to an employee of the entity if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;
- (g) an entity engaged solely in nonresidential or commercial real estate lending;
- (h) an entity qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan's participants;
- (i) the Federal national mortgage association, the Federal home loan mortgage corporation, and the government national mortgage association;
- (j) a 501(c)(3) corporation, which is not otherwise engaged in, or holding itself out to the public as

being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals.

(k) a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker or mortgage loan originator;

(l) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or

(n) a licensed certified public accountant or a licensed public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator.

(2) The department or the secretary of housing and urban development may exempt from this part mortgage service loss mitigation specialist if the department or the secretary of housing and urban development determines by guidelines, interpretation or rule that an exemption of a mortgage service loss mitigation specialist is not in violation of the secure and fair enforcement for mortgage licensing act, Title V of the housing and economic recovery act, Public Law 110-289.

(3) The burden of proving an exemption under this section is on the person claiming the exemption. The department shall create a form for requesting an exemption.

**NEW SECTION.** **Section 5. Loan processors and underwriters.** (1) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities pertaining to originating a residential mortgage loan.

(2) A loan processor or underwriter who is an independent contractor may not engage in mortgage loan originator activities unless licensed as a mortgage loan originator under this part. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

**Section 6.** Section 32-9-108, MCA, is amended to read:

**"32-9-108. Overall licensing requirements for mortgage brokers, mortgage lenders and mortgage loan originators.** (1) The department is authorized to:

(a) participate in the nationwide mortgage licensing system and registry and  
(b) shall require mortgage lenders, mortgage brokers, and mortgage loan originators to apply for state licensure on applications approved by the nationwide mortgage licensing system and registry by the dates set forth in [Section 3].

(2) The department may establish requirements as necessary to comply with the nationwide mortgage licensing system and registry including:

(a) require payment of nonrefundable fees to apply for, maintain, and renew licensees through the nationwide mortgage licensing system and registry;

(b) set renewal or reporting dates;

(c) set procedures for amending or surrendering a license; and

(d) require an other activity necessary for participation in the nationwide mortgage licensing system and registry.

(3) The state portion of the fees collected by the nationwide mortgage licensing system and registry under this section must be deposited into the department's account in the state special revenue fund to be used for administering this part.

(4) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the implementation date of subsection (1) is:

(a) April 1, 2010, for all new applicants applying after [the effective date of this act];

(b) June 30, 2010, for all licensees with current licenses as of [the effective date of this act]; and

(c) for loss mitigation specialists, if not exempt under [section 4] 32-9-104 (2), a date as set by the department by rule.

**NEW SECTION. Section 7. Dual licensure.** (1) an entity may be simultaneously licensed as a mortgage lender and a mortgage broker provided that the entity meets all requirements for licensure as a mortgage lender and a mortgage broker.

**NEW SECTION. Section 8. Prelicensing education requirements for mortgage loan originators.** (1) An individual seeking a mortgage loan originator's license shall complete at least 20 hours of approved education courses, which must include:

(a) at least 3 hours of training on federal law and regulations;



(b) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and

(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) The prelicensing education courses that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be accepted with respect to the completion of prelicensing education requirements in Montana.

(3) If allowed by the nationwide mortgage licensing system and registry, the department is authorized to certify to the nationwide mortgage licensing system and registry that continuing education hours that were previously approved by the department have been completed by a mortgage loan originator.

**Section 9.** Section 32-9-109, MCA, is amended to read:

**"32-9-109. Experience requirements.** (1) (a) An individual applying for a license as a designated manager must have a minimum of 3 years of experience working as a mortgage loan originator or in a related field.

(b) An individual applying for a license as a mortgage loan originator must have a minimum of 6 months of experience working in a related field.

(2) The department shall by rule establish what constitutes work in a related field."

**Section 10.** Section 32-9-110, MCA, is amended to read:

**"32-9-110. Examination requirements mortgage loan originators.** (1) An individual seeking a mortgage loan originator's license shall submit to an examination.

(2) In order to meet the examination requirement referred to in subsection (1), an individual shall pass, in accordance with the standards established under this section, a qualified written exam developed by the nationwide mortgage licensing system and registry and that is administered by an approved test provider.

(3) A written examination may not be treated as a qualified written examination for purposes of this section unless the exam adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including but not limited to:

(a) ethics;

(b) federal and state laws and regulations pertaining to mortgage origination; and

(c) federal and state laws and regulations pertaining to fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues.

(4) An individual may not be considered to have passed a qualified examination unless the individual achieves an exam score of at least 75%.

(5) An individual may retake a test three consecutive times with each consecutive test being taken at least 30 days after the previous testing date.

(6) An individual who fails three consecutive tests may not take the test for at least 6 months from the date of failing the third test.

(7) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years shall retake the test. The 5-year period may not take into account any time during which the person is a registered mortgage loan originator.

**Section 11.** Section 32-9-115, MCA, is amended to read:

**"32-9-115. Application for mortgage broker license.** (1) An applicant under this part shall apply for a state license in a form prescribed by the department that complies with the requirements of the nationwide mortgage licensing system and registry. Each form must contain content as set forth by the nationwide mortgage licensing system and registry and may be changed or updated by the department as necessary to comply with the nationwide mortgage licensing system and registry.

(2) The department may establish a relationship or contract with the nationwide mortgage licensing system and registry or another entity designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part.

(3) An applicant shall furnish information to the nationwide mortgage licensing system and registry concerning the applicant's identity, including but not limited to:

(a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check;

(b) legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justice as authorized for a state criminal history background check; and

(c) personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry and the commissioner to obtain:

(i) an independent credit report from a credit reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

(ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction.

(4) To reduce the points of contact that the federal bureau of investigation may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.

(5) To reduce the points of contact that the department may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source directed by the department.

**NEW SECTION. Section 12. Application for an entity license.** (1) In order for an entity to be considered for state licensure, each of the following is required to independently meet the requirements established in [new section 16(1)(a) through (c)]:

- (a) ultimate equity owners of 25% or more of the applicant if the equity owners are individuals;
- (b) control persons of the applicant if the control persons are individuals; and
- (c) individuals that control, directly or indirectly, the election of 25% or more of the members of the board of directors of the entity.

**Section 13.** Section 32-9-116, MCA, is amended to read:

**"32-9-116. Employment of mortgage loan originator license.** (1) A mortgage loan originator may transact business only for one employing mortgage broker or employing mortgage lender licensed in accordance with the provisions of this part. Each original license issued to a mortgage loan originator must be provided to and maintained by the employing mortgage broker or employing mortgage lender at the employing licensee's main office. A copy of the mortgage loan originator's license must be displayed at the office where that mortgage loan originator principally transacts business.

(2) If the employment of a mortgage loan originator is terminated, the mortgage broker or mortgage lender shall return the mortgage loan originator's license to the department within 5 business days after the termination and remove the sponsorship of the mortgage loan originator on the nationwide mortgage licensing system and registry within 5 business days after termination. For a period of 6 months after the termination of employment, the mortgage loan originator may request the transfer of the license to another mortgage broker or mortgage lender by complying with the nationwide mortgage licensing system and registry procedures, and paying a fee established by the department by rule. The removal of the sponsorship of the license of any

mortgage loan originator that is not transferred to another mortgage broker or mortgage lender terminates the right of the mortgage loan originator to engage in any residential mortgage loan origination activity until the nationwide mortgage licensing system and registry procedures have been followed to sponsor the license. The license of any mortgage loan originator that has been removed from sponsorship and not transferred within 6 months of termination of employment must be canceled."

**NEW SECTION. Section 14. Provisional licenses and previously licensed persons.** The department may establish by rule licensing requirements, fees, and interim procedures for licensing and acceptance of applications for the purposes of implementing an orderly and efficient licensing process. The department may by rule establish expedited review and licensing procedures for a previously licensed person.

**Section 15.** Section 32-9-117, MCA, is amended to read:

**"32-9-117. Fees -- license renewal -- disposition of fees.** (1) (a) Except as provided in subsection (1)(b), an entity seeking licensure as a mortgage broker shall pay an initial nonrefundable license application fee of \$500. A mortgage loan originator shall pay an initial nonrefundable license application fee of \$400. An entity seeking licensure as a mortgage lender shall pay an initial nonrefundable license application fee of \$750 and an additional application fee of \$250 for any branch location. An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months.

(b) An individual who is seeking licensure as a mortgage loan originator and who is the owner of an entity that is seeking licensure as a mortgage broker shall pay a single initial nonrefundable license application fee of \$500.

(2) The license of a mortgage broker, mortgage lender, or mortgage loan originator is valid for a 1-year period. A state licensee shall submit a renewal application and pay to the nationwide mortgage licensing system and registry a renewal fee in an amount set by the department by rule. The department shall establish by rule the requirements for renewal applications. The department shall establish a single renewal fee for individuals and entities described in subsections (1)(b)(i) and (1)(b)(ii). An individual described in subsection (1)(b)(i) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager. The fees set by the department must be commensurate with the costs of the program. Failure to submit required information or fees within the time prescribed means the license automatically expires. The department may adopt procedures for the reinstatement of expired licenses that are consistent with the standards established by the nationwide mortgage licensing system.

(3) An application for renewal must be accompanied by evidence that the continuing education

requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months. An application for renewal also must demonstrate that the licensee continues to meet the standards for licensure under this part and that the applicant has paid all fees for renewal of the license.

(4) The state portion of the fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part.

(5) An applicant for a mortgage broker, mortgage lender or mortgage loan originator license renewal shall apply for state licensure on applications approved by the nationwide mortgage licensing system and registry."

**NEW SECTION. Section 16. Compliance of current mortgage brokers, mortgage lenders and mortgage loan originator licensees with background check and minimum standards -- renewals.** (1) Upon application to the nationwide mortgage licensing system and registry by a current licensee for renewal of a mortgage broker, mortgage lender or mortgage loan originator license, the applicant shall furnish information concerning the applicant to the nationwide mortgage licensing system and registry regarding the following:

(a) fingerprints for submission to the Federal bureau of investigation and any governmental agency or entity authorized to receive information for a criminal history background check at the state, Federal and international levels;

(b) legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justices as authorized for a state criminal history background check;

(c) a written statement of personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including authorization for the nationwide mortgage licensing system and registry to obtain:

(i) a current independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(ii) information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(2) To reduce the points of contact that the federal bureau of investigation may be required to maintain for purposes of subsection (1), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.

(3) To reduce the points of contact that the department may be required to maintain for purposes of subsection (1), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source directed by the department.

(4) Upon application to the nationwide mortgage licensing system and registry by a current licensee for renewal of a mortgage broker, mortgage lender, or mortgage loan originator license, the department shall commence a supplemental investigation of the applicant and may not renew any license if any of the following facts are found:

(a) the applicant has ever had a mortgage broker, mortgage lender, or mortgage loan originator license or their equivalent revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation may not be considered a revocation;

(b) the applicant has been convicted of or plead guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon of a conviction is not a conviction for purposes of this subsection (4)(b);

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section.

(3) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (4)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (4)(c).

(4) The applicant has not met the surety bond or net worth requirement as required pursuant to 32-9-123.

(5) The applicant has not completed the prelicensing education requirement described in [new section 8].

(6) The applicant has not passed a written test that meets the test requirements described in 32-9-110.

(7) The applicant made a material misstatement of fact or material omission of fact in the application.

**NEW SECTION. Section 17. Denial of mortgage broker, mortgage lender, or mortgage loan**

**originator license application or license renewal.** (1) The department may not issue or renew any mortgage broker, mortgage lender, or mortgage loan originator license if any of the following facts are found during the application procedure:

(a) the applicant has ever had a mortgage broker, mortgage lender, or mortgage loan originator license or their equivalent revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation may not be considered a revocation;

(b) the applicant has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon of a conviction is not a conviction for purposes of this subsection (1)(b);

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section.

(2) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (1)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (1)(c).

(3) The applicant has not met the surety bond or net worth requirement as required pursuant to 32-9-123.

(4) The applicant has not completed the prelicensing education requirement described in [new section 8].

(5) The applicant has not passed a written test that meets the test requirements described in 32-9-110.

(6) The applicant made a material misstatement of fact or material omission of fact in the application.

**Section 18.** Section 32-9-118, MCA, is amended to read:

**"32-9-118. Continuing education requirements for mortgage loan originators.** (1) All mortgage loan originators shall complete and submit to the nationwide mortgage licensing system and registry evidence of at least 12 hours of continuing education every year at the time they submit their license renewal applications. The 12 hours of continuing education must be obtained in an approved education course."

- (2) The 12 hours of education must include at least:
  - (a) 3 hours of training on federal laws and regulations;
  - (b) 2 hours of training in ethics, including instruction on fraud prevention, consumer protection, and fair lending issues; and
  - (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.
- (3) A person who has successfully completed the education requirements that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be given credit toward completion of continuing education requirements in Montana.
- (4) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

**Section 19.** Section 32-9-121, MCA, is amended to read:

**"32-9-121. Records maintenance -- advertising requirement.** (1) Licensees shall maintain books, accounts, records, and copies of residential mortgage loan files and trust and escrow account records that are necessary to enable the department to determine whether a licensee is in compliance with the applicable laws and rules. The materials must be maintained in accordance with generally accepted accounting principles and good business practices. Each office location must have at least one phone line. Whenever a licensee's usual business location is outside of this state the licensee shall, at its election, either maintain its books and records at a location in this state or reimburse the department for expenses incurred, including but not limited to staff time, transportation, food, and lodging expenses, relating to an examination or investigation under this part.

(2) A mortgage broker or mortgage lender shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker or mortgage lender shall maintain trust or escrow account records for a minimum of 5 years.

(3) (a) In any printed, published, e-mail, or internet advertisement for the provision of services, the following information must be included:

(i) a name and license number for each mortgage broker, mortgage lender or mortgage loan originator advertising as an individual; or

(ii) the name and license number only of the licensed entity when the licensed entity is advertising on



its own behalf or as an entity with one or more mortgage brokers, mortgage lenders or mortgage loan originators also listed.

(b) For the purposes of this subsection (3), advertising does not include stationery or business forms but does include business cards. A business card must include a mortgage broker's, mortgage lender's or mortgage loan originator's license number but is not required to list the entity's license number if the entity's name is listed."

**NEW SECTION. Section 20. 32-9-122. Designated manager and branch license requirements.**

(1) A mortgage broker or mortgage lender entity shall apply for a state license for a main office and every branch office through the nationwide mortgage licensing system and registry and maintain a unique identifier.

(2) A mortgage broker entity shall designate to the nationwide mortgage licensing system and registry an individual who is licensed by this state as a mortgage loan originator to serve as the designated manager of the main office and a separate designated manager to serve at each branch location.

(3) A mortgage lender entity shall designate to the nationwide mortgage licensing system and registry for each office location that originates a residential mortgage loan an individual who is licensed as a mortgage loan originator as the designated manager of that location.

(4) A designated manager must have 3 years of experience as either a mortgage loan originator or registered loan originator.

(5) A designated manager is responsible for the operation of the business at the location under the designated manager's full charge, supervision, and control.

(6) A mortgage broker or mortgage lender entity is responsible for the conduct of a designated manager or mortgage loan originator while the designated manager or mortgage loan originator is employed by the mortgage broker or mortgage lender entity, including violations of federal laws that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part.

(7) A designated manager is responsible for any conduct that violates federal laws that are applicable to the origination of residential mortgage loans, violations of this part, or for violations of any administrative rules adopted pursuant to this part. The designated manager's responsibility includes conduct

by the designated manager, each mortgage broker, and each mortgage loan originator employed by the entity while the designated manager is employed at the location that the designated manager manages.

(8) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker or mortgage lender shall designate another individual licensed as a mortgage broker as designated manager and shall submit information to the nationwide mortgage licensing system and registry establishing that the subsequent designated manager is in compliance with the provisions of this part.

(9) If the employment of a designated manager is terminated, the mortgage broker or mortgage lender shall return the designated manager's license to the department within 5 business days of the termination and remove the sponsorship of the designated manager on the nationwide mortgage licensing system within 5 business days after termination.

**NEW SECTION. Section 21. Registered agent for mortgage broker or mortgage lender licensee without physical office in the state – venue.** (1) An applicant for a mortgage broker or lender license under [section 12] who does not maintain a physical office within the state shall file, in a form prescribed by the department, an irrevocable consent appointing the department as the registered agent of the applicant for the purpose of receiving service of any lawful process in a noncriminal suit, action, or proceeding against the applicant or its successors, executor, or administrator that is based upon an alleged violation of this part or any administrative rule adopted pursuant to this part. Service on the department has the same force and validity as if served personally on the applicant or the person filing the consent.

(2) Service must be made by leaving a copy of the process in the office of the department and is effective only if:

(a) notice of the service and a copy of the process is sent by certified mail to the defendant or respondent at the last-known address on file with the department by the plaintiff, which may be the department, in an action, suit, or proceeding; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within a time the court allows.

(3) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted pursuant to this part between the department and a licensee who does not maintain a physical office in this state, venue must be exclusively in Lewis and Clark County.

(4) A notice, hearing schedule, or order must be mailed to the person or licensee by certified mail at the last-known address for which a license was issued or, in the case of an unlicensed person, at the last-known address of the person.

**Section 22.** Section 32-9-123, MCA, is amended to read:

**"32-9-123. Surety bond, irrevocable letter of credit, or net worth requirement -- notice of legal action.** (1) (a) A mortgage loan originator must be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of or exclusive agent for a licensed mortgage lender or mortgage broker, the surety bond of the licensed mortgage lender or mortgage broker may be used in lieu of a mortgage loan originator's surety bond.

(b) A mortgage lender may provide an irrevocable letter of credit naming the department as beneficiary in lieu of a surety bond as provided in subsection (3).

(c) The department shall use the proceeds of the surety bonds to reimburse borrowers or bona fide third parties who successfully demonstrate a financial loss because of an act of a mortgage broker, mortgage loan originator or mortgage lender that violates the provisions of this part.

(2) (a) A mortgage broker or mortgage lender is required to maintain one surety bond each entity license.

(b) The amount of the required surety bond must be calculated by combining the annual loan production amounts for all persons originating residential loans and for all business locations of the mortgage broker or mortgage lender and must be in the following amount:

- (i) \$25,000 for a combined annual loan production that does not exceed \$50 million a year;
- (ii) \$50,000 for annual loan production of \$50 million but not exceeding \$100 million a year; or
- (iii) \$100,000 for annual loan production of more than \$100 million a year.

(3) (a) In lieu of a surety bond, a mortgage broker may meet a minimum net worth requirement,

(b) Minimum net worth must be maintained in an amount determined by the department that reflects the dollar amount of loans originated.

(c) The department shall adopt rules with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this part.

(4) Evidence that a mortgage broker is approved by the department of housing and urban development to originate loans insured by the federal housing administration must be considered as satisfying the net worth requirement provided that the actual net worth determined in the HUD audit is equivalent to the bond amount set forth for the corresponding dollar amount range set forth in (2)(b)(i) through (2)(b)(iii).

(5) A mortgage broker, mortgage lender, or mortgage loan originator shall give notice to the department by certified mail within 15 days of the mortgage broker's, mortgage lender's, or mortgage loan originator's obtaining knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, mortgage lender, anyone having an ownership interest in a mortgage broker entity or mortgage lender entity, or a mortgage loan originator. In the case of a legal action, the notice must include a copy of the criminal or civil judgment."

**NEW SECTION. Section 23. Escrow fund.** (1) An escrow fund authorized for any purpose by a mortgage loan contract is subject to applicable state and federal requirements. Money received from a borrower by a mortgage lender licensed under this part must be considered as held in trust immediately upon receipt. The mortgage lender shall place escrow funds in a depository institution prior to the end of the third business day following their receipt.

(2) An escrow fund account must be a separate account established to hold only borrowers' funds. The account must be designated and maintained for the benefit of borrowers. Escrow funds may not be commingled with any other funds.

(3) Escrow funds must be kept in the segregated account until disbursement. Money maintained in an escrow fund account is exempt from execution, attachment, or garnishment.

(4) A licensee may not encumber the corpus of an escrow fund account or commingle other operating funds with account funds.

(5) An escrow fund account may be used only for:

(a) a payment authorized by the borrower or the mortgage loan contract or required by federal or state law;

(b) a refund to the borrower;

(c) transfer to a depository institution;

(d) transfer to the appropriate mortgage lender or mortgage servicer in the case of a transfer of servicing;

(e) a purpose authorized by the mortgage loan contract; or

(f) purposes of complying with an order issued by the commissioner or a court.

(6) Accounting for escrow funds must be performed in compliance with the aggregate accounting rules established in regulation X, 24 CFR 3500, and 71-1-115.

**NEW SECTION. Section 24. Disclosure of mortgage costs by mortgage lender.** (1) Within 3 business days of taking a mortgage loan application and prior to receiving any consideration from the borrower, the mortgage lender shall disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and any regulations promulgated under those acts.

(2) A mortgage lender shall disclose the terms of any prepayment penalty on the mortgage loan, including the amount of the prepayment penalty or the formula for calculating the prepayment penalty. If the initial mortgage loan offer does not include a prepayment penalty, but a prepayment penalty is later included in the mortgage loan offer, disclosure of the terms of the prepayment penalty must be made within 3 business days of the prepayment penalty being added to the mortgage loan offer.

(3) A licensed mortgage lender may not require a borrower to pay any fees or charges prior to the mortgage loan closing, except:

(a) charges to be incurred by the mortgage lender on behalf of the borrower for services from third parties necessary to process the application, such as credit reports and appraisals;

(b) an application fee;

(c) an interest rate lock-in fee if the borrower is provided an interest rate lock-in agreement, the terms of which must include but are not limited to:

(i) the expiration date of the interest rate lock-in agreement;

(ii) the principal amount of the mortgage loan, the term of the mortgage loan, and identification of the residential real estate;

(iii) the initial interest rate and the discount points to be paid; and

(iv) the amounts and payment terms of the interest rate lock-in along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund; and

(d) a commitment fee, upon approval of the mortgage loan application, if the borrower is provided a commitment in writing that it is signed by the mortgage lender and the borrower and the terms include the terms and conditions of the mortgage loan as well as the terms and conditions of the commitment, including but not limited to:

- (i) the time period during which the commitment is irrevocable and may be accepted by the borrower, which may not be less than 7 calendar days from date of commitment or date of mailing, whichever is later;
- (ii) the amount and payment terms of the commitment fee, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund;
- (iii) the expiration date of the commitment;
- (iv) conditions precedent to closing; and
- (v) the terms and conditions, if any, for obtaining a refund of fees for third-party services or arranging for the transfer of third-party service work products to another mortgage lender.

(4) Any amount collected under subsection (3) in excess of the actual costs must be returned to the borrower within 60 days after rejection, withdrawal, or closing.

(5) (a) Except as provided in subsection (5)(b), fees or charges collected pursuant to this section, other than fees for third-party services collected pursuant to subsection (3)(a), must be refunded if a valid commitment is not produced or if closing does not occur.

(b) Applicable fees may be retained by the licensee in accordance with the terms of the commitment upon the licensee's ability to demonstrate any of the following:

- (i) the borrower withdraws the mortgage loan application after the lender has issued a commitment on the same terms and conditions disclosed to the borrower on the most recent good faith estimate;
- (ii) the borrower has made a material misrepresentation or omission on the mortgage loan application; or
- (iii) the borrower has failed to provide documentation necessary to the processing or closing of the mortgage loan application and closing does not occur without fault of the lender.

**Section 25.** Section 32-9-124, MCA, is amended to read:

**"32-9-124. Prohibitions -- required disclosure.** (1) A mortgage broker, mortgage lender, or mortgage loan originator may not do any of the following:

- (a) retain original documents owned by the borrower and submitted in connection with the loan application;
- (b) directly or indirectly employ any scheme to defraud or mislead a borrower, a mortgage lender, or any other person;
- (c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions;
- (d) fail to pay a bona fide third party later than 30 days after recording of the loan closing documents

or 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties;

(e) accept any fees or compensation at closing that were not disclosed as required by state or federal law;

(f) accept any fees or compensation in excess of those allowed by state or federal law;

(g) sign a borrower's application or related documents on behalf of or in lieu of another mortgage broker, mortgage lender, or mortgage loan originator;

(h) (i) assist or aid and abet any person in the conduct of business under this part without a valid license as required under this part; or

(ii) conduct any business covered by the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, without holding a valid license as required under this part;

(i) fail to comply with this part or rules promulgated under this part or fail to comply with any other state or federal laws, including the rules and regulations adopted pursuant to those laws, applicable to any business authorized by or conducted under this part;

(j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a government agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the department or another governmental agency.

(2) A mortgage lender may not do any of the following:

(a) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(b) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:

(i) direct deposit to a borrower's account;

(ii) wire;

(iii) bank or certified check;

(iv) attorney's check drawn on a trust account; or

(v) other form as specifically authorized by applicable law;

(c) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;

(d) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;

(e) fail to take the actions required to affect a release of the lender's security interest in the property as described in 71-1-212;

(f) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(g) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;

(h) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants; or

(i) falsely advertise or misuse names in violation of 18 U.S.C. 709."

(3) Prior to providing residential mortgage services to a borrower, the mortgage loan originator licensee, in addition to other disclosures required by this part, subsection (3), and other state and federal laws, shall provide to the borrower a written disclosure containing substantially the following language, which must be signed by the borrower:

**"MORTGAGE LOAN ORIGATION DISCLOSURE**

(Name of licensee) is a licensed mortgage broker in Montana authorized to provide mortgage brokerage services to you in connection with your real estate loan. Lenders whose loan products we distribute generally provide their loan products to us at a wholesale rate. The rate you pay may be higher.

**SECTION 1. NATURE OF RELATIONSHIP.** In connection with this mortgage loan:

(1) (name of licensee) is acting as an independent contractor and not as your agent;

(2) (name of licensee) enters into separate independent contractor agreements with various lenders;

and

(3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available.

**SECTION 2. OUR COMPENSATION.**

(1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation.

(2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either



you or the lender.

(3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender.

(4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender.

By signing below, you acknowledge that you have received a copy of this disclosure."

(3) The disclosure must include the address of the department's division of banking and financial institutions, the division's phone number and website, and a statement informing borrowers that the division can provide information about whether a mortgage broker or mortgage loan originator is licensed as well as other legally available information.

(4) The disclosure must include the the state license number and the unique identifier issued by the nationwide mortgage licensing system and registry for the mortgage loan originator."

**Section 26.** Section 32-9-126, MCA, is amended to read:

**"32-9-126. Revocation, suspension, conditioning and reinstatement of licenses.** (1) The department, upon giving a mortgage broker, mortgage lender, or mortgage loan originator licensee 10 days' written notice, which includes a statement of the grounds for the proposed suspension, conditioning or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend, condition or revoke a license if it finds that the licensee has violated any provision of this part.

(2) All notices, hearing schedules, and orders must be mailed to the licensee by certified mail to the address for which the license was issued.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) The department may reinstate any suspended license if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license.

(5) The department may by order vacate a revocation of a license and enter an appropriate order.

**NEW SECTION. Section 27. Unique identifier for mortgage brokers, mortgage lender mortgage loan originators and registered mortgage loan originators.** (1) Each licensed mortgage broker, mortgage lender and mortgage loan originator shall post the mortgage broker's, mortgage lender's or mortgage loan originator's unique identifier in a conspicuous place within the office where the licensee principally transacts business.

(2) The department shall post on its website the names of all licensees, together with their license numbers. In conjunction with that posting, the department shall also provide the unique identifier of all licensed mortgage brokers and mortgage loan originators so that consumers, borrowers, and the public may access that information for use in conjunction with the nationwide mortgage licensing system and registry.

(3) The department shall also post on its website the names and unique identifiers of all registered mortgage loan originators conducting business in the state.

**NEW SECTION. Section 28. Mortgage call reports.** Each mortgage broker and mortgage lender entity shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain information that the nationwide mortgage licensing system and registry may require.

**NEW SECTION. Section 29. Nationwide mortgage licensing system and registry information challenge process.** The department shall establish a process under which mortgage brokers, mortgage lenders and mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the department.

**Section 30.** Section 32-9-130, MCA, is amended to read:

**"32-9-130. Department authority -- rulemaking.** (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) (i) ensuring that all persons are informed of their right to contest a decision by the department

under the Montana Administrative Procedure Act; and

(ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs;

(d) prescribing forms for applications;

(e) establishing fees for license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(4) (a) For the purposes of investigating violations or complaints arising under this part or for the purposes of examination, the department may review, investigate, or examine any licensee or person subject to this part as often as necessary in order to carry out the purposes of this part.

(b) The commissioner may direct, subpoena, or order the attendance of and may examine under oath any person whose testimony may be required about the subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner considers relevant to the inquiry.

(5) Each licensee or person subject to this part shall make available to the department upon request the documents and records relating to the operations of the licensee or person. The department is entitled to access to the documents and records and to interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, customers of the licensee or person concerning the business of the licensee or person, or any other person having knowledge the department considers relevant.

(6) The department may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation, or license termination or to determine compliance with this part.

(a) The department has the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence including but not limited to:

(i) criminal, civil, and administrative history information, including confidential criminal justice information as defined in 44-5-103;

(ii) personal history and experience information including independent credit reports obtained from a credit reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

(iii) any other documents, information, or evidence the department considers relevant to an inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence."

(b) The total cost for any investigation or examination must be in accordance with fees determined by the department by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the inspection or examination. The fees set by the department must be commensurate with the cost of the examination or investigation. All fees collected under this section must be deposited in the department's account in the state special revenue fund and be used by the department to cover the department's cost of conducting examinations and investigations.

(c) The cost of an examination or investigation must be paid by the licensee or person within 30 days after the date of the invoice. Failure to pay the cost of investigation or examination when due will result in the suspension or revocation of a licensee's license.

(7) (a) The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor;

(ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and

(iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

(b) to carry out the purposes of this section, the department may:

(i) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this section;

(ii) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(iii) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this part;

(ii) accept and rely on examination or investigation reports by other government officials, within or outside of this state;

(iii) accept audit reports made by an independent certified public accountant for the licensee or person subject to this part if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of the department under this part; and

(iv) assess against the licensee or person subject to this part the costs incurred by the department in conducting the investigation or examination.

(c) Except as provided in subsection (5)(a)(i) and [Section 30], the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(8) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and mortgage lender and a roster of all mortgage loan originators and designated managers and the name of their employing mortgage brokers or employer mortgage lenders. The roster must be available to interested persons and to the general public.

(9) Pursuant to section 1508(d) of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:

(a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;

(b) participate in the nationwide mortgage licensing system and registry;

(c) ensure that all mortgage broker, mortgage lender and mortgage loan originator applicants under this part apply for state licensure and registration through and pay any required nonrefundable fees to, and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry; and

(d) regularly report violations of state or federal law and enforcement actions to the nationwide mortgage licensing system and registry.

(10) (a) The department may, if the U.S. department of housing and urban development determines that a provision of this part does not meet the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289, or that additional persons are subject to this part, refrain from enforcing any provision that violates federal law and shall by rule invalidate any noncompliant exemption to this part or require that additional persons be temporarily subject to this part to be compliant with federal law, including the provisions for licensure, registration with and maintenance of a valid unique identifier with the nationwide mortgage licensing system and registry.

(b) The department shall propose to the regular session of the legislature that follows the determination by the U.S. department of housing and urban development legislation to address the incompatibility with federal law. The provisions of subsection (8)(a) lapse upon passage of correcting legislation.

**Section 31.** Section 32-9-133, MCA, is amended to read:

**"32-9-133. Penalties -- restitution.** (1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed \$5,000 for the first violation and not to exceed \$10,000 for each subsequent violation.

(2) The department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action. In addition, the department may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker business.

(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.

(4) The fines must be deposited in the department's account in the state special revenue fund and used to administer the provisions of this part.

(5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker, mortgage lender or mortgage loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than \$250 or more than \$1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense."

**NEW SECTION. Section 32. Confidentiality.** (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry.

(b) Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority and with the board of governors of the federal reserve system without the loss of confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law.

(2) The department may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or associations representing governmental agencies as established by rule of the department.

(3) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to:

(a) disclosure under a federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry concerning the information or material, the person to whom the information or material pertains waives, in whole or in part, that privilege.

(4) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289.

(5) Examination reports, information contained in examination reports, and examiners' work papers are confidential, subject to the licensee's and any uninvolved person's reasonable expectation of privacy and, although filed with the department as provided in this part, are not subject to public inspection.

(6) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage brokers, and mortgage loan originators included in the nationwide mortgage licensing system and registry that is available for public access.

**NEW SECTION.** **Section 33. Repealer.** Sections 32-10-101, 32-10-102, 32-10-103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, and 32-10-515, MCA, are repealed.

**NEW SECTION.** **Section 34. Codification instruction.** [Sections 5, 7, 11, 14 through 16, 22 through 24, and 27] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections 5, 7, 11, 14 through 16, 22 through 24, and 27].

**NEW SECTION.** **Section 35. Severability.** If a part of [this act] is invalid, including a determination that any part of [this act] is out of compliance with the secure and fair enforcement for mortgage licensing act of 2008, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**NEW SECTION.** **Section 36. Contingent Suspension.** If the Secretary of Housing and Urban Development determines by guideline, interpretation, or rule that any part of [this act] is out of compliance with SAFE act the operation and effect of that part is suspended.

**NEW SECTION.** **Section 37. Effective date.** [This act] is effective July 1, 2009.

- END -



## **TITLE V—S.A.F.E. MORTGAGE LICENSING ACT**

Sec. 1501. Short title.

Sec. 1502. Purposes and methods for establishing a mortgage licensing system and registry.

Sec. 1503. Definitions.

Sec. 1504. License or registration required.

Sec. 1505. State license and registration application and issuance.

Sec. 1506. Standards for State license renewal.

Sec. 1507. System of registration administration by Federal agencies.

Sec. 1508. Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system.

Sec. 1509. Backup authority to establish a nationwide mortgage licensing and registry system.

Sec. 1510. Fees.

Sec. 1511. Background checks of loan originators.

Sec. 1512. Confidentiality of information.

Sec. 1513. Liability provisions.

Sec. 1514. Enforcement under HUD backup licensing system.

Sec. 1515. State examination authority.

Sec. 1516. Reports and recommendations to Congress.

Sec. 1517. Study and reports on defaults and foreclosures.

## **TITLE V—S.A.F.E. MORTGAGE LICENSING ACT**

### **SEC. 1501. SHORT TITLE.**

This title may be cited as the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or “S.A.F.E. Mortgage Licensing Act of 2008”.

### **SEC. 1502. PURPOSES AND METHODS FOR ESTABLISHING A MORTGAGE LICENSING SYSTEM AND REGISTRY.**

In order to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are hereby encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry that accomplishes all of the following objectives:

- (1) Provides uniform license applications and reporting requirements for State-licensed loan originators.
- (2) Provides a comprehensive licensing and supervisory database.

- (3) Aggregates and improves the flow of information to and between regulators.
- (4) Provides increased accountability and tracking of loan originators.
- (5) Streamlines the licensing process and reduces the regulatory burden.
- (6) Enhances consumer protections and supports anti-fraud measures.
- (7) Provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.
- (8) Establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.
- (9) Facilitates responsible behavior in the subprime mortgage market place and provides comprehensive training and examination requirements related to subprime mortgage lending.
- (10) Facilitates the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.

#### **SEC. 1503. DEFINITIONS.**

For purposes of this title, the following definitions shall apply:

- (1) **FEDERAL BANKING AGENCIES.**—The term “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.
- (2) **DEPOSITORY INSTITUTION.**—The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(3) LOAN ORIGINATOR.—

(A) IN GENERAL.—The term “loan originator”—

(i) means an individual who—

(I) takes a residential mortgage loan application;  
and

(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;

(ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause;

(iii) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator; and

(iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.

(B) OTHER DEFINITIONS RELATING TO LOAN ORIGINATOR.—For purposes of this subsection, an individual “assists a consumer in obtaining or applying to obtain a residential mortgage loan” by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(C) ADMINISTRATIVE OR CLERICAL TASKS.—The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) REAL ESTATE BROKERAGE ACTIVITY DEFINED.—The term “real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including—

- (i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);
- (iv) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
- (v) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), or (iv).

(4) LOAN PROCESSOR OR UNDERWRITER.—

(A) IN GENERAL.—The term “loan processor or underwriter” means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—

- (i) a State-licensed loan originator; or
- (ii) a registered loan originator.

(B) CLERICAL OR SUPPORT DUTIES.—For purposes of subparagraph (A), the term “clerical or support duties” may include—

- (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
- (ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

See  
also  
p. 7

(5) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and

registration of State-licensed loan originators and the registration of registered loan originators or any system established by the Secretary under section 1509.

(6) NONTRADITIONAL MORTGAGE PRODUCT.—

The term “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(7) REGISTERED LOAN ORIGINATOR.—The term “registered loan originator” means any individual who—

(A) meets the definition of loan originator and is an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution;  
and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(8) RESIDENTIAL MORTGAGE LOAN.—The term “residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(9) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.

(10) STATE.—The term “State” means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(11) STATE-LICENSED LOAN ORIGINATOR.—The term “State-licensed loan originator” means any individual who—

- (A) is a loan originator;
- (B) is not an employee of—
  - (i) a depository institution;
  - (ii) a subsidiary that is—
    - (I) owned and controlled by a depository institution; and
    - (II) regulated by a Federal banking agency; or
  - (iii) an institution regulated by the Farm Credit Administration; and
- (C) is licensed by a State or by the Secretary under section 1508 and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(12) UNIQUE IDENTIFIER.—

(A) IN GENERAL.—The term “unique identifier” means a number or other identifier that—

- (i) permanently identifies a loan originator;
- (ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and
- (iii) shall not be used for purposes other than those set forth under this title.

(B) RESPONSIBILITY OF STATES.—To the greatest extent possible and to accomplish the purpose of this title, States shall use unique identifiers in lieu of social security numbers.

**SEC. 1504. LICENSE OR REGISTRATION REQUIRED.**

(a) IN GENERAL.—Subject to the existence of a licensing or registration regime, as the case may be, an individual may not engage in the business of a loan originator without first—

- (1) obtaining, and maintaining annually—
  - (A) a registration as a registered loan originator; or

- (B) a license and registration as a State licensed loan originator; and
- (2) obtaining a unique identifier.

(b) LOAN PROCESSORS AND UNDERWRITERS.—

(1) SUPERVISED LOAN PROCESSORS AND UNDERWRITERS.—A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform any of the activities of a loan originator shall not be required to be a State-licensed loan originator.

(2) INDEPENDENT CONTRACTORS.—An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such independent contractor is a State-licensed loan originator.

**SEC. 1505. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE.**

(a) BACKGROUND CHECKS.—In connection with an application to any State for licensing and registration as a State-licensed loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including—

(1) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(2) personal history and experience, including authorization for the System to obtain—

(A) an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(B) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) **ISSUANCE OF LICENSE.**—The minimum standards for licensing and registration as a State-licensed loan originator shall include the following:

- (1) The applicant has never had a loan originator license revoked in any governmental jurisdiction.
- (2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court—
  - (A) during the 7-year period preceding the date of the application for licensing and registration; or
  - (B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.
- (3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of this title.
- (4) The applicant has completed the pre-licensing education requirement described in subsection (c).
- (5) The applicant has passed a written test that meets the test requirement described in subsection (d).
- (6) The applicant has met either a net worth or surety bond requirement, or paid into a State fund, as required by the State pursuant to section 1508(d)(6).

(c) **PRE-LICENSING EDUCATION OF LOAN ORIGINATORS.**—

- (1) **MINIMUM EDUCATIONAL REQUIREMENTS.**—In order to meet the pre-licensing education requirement referred to in subsection (b)(4), a person shall complete at least 20 hours of education approved in accordance with paragraph (2), which shall include at least—
  - (A) 3 hours of Federal law and regulations;
  - (B) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
  - (C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.



(2) APPROVED EDUCATIONAL COURSES.—For purposes of paragraph (1), pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(3) LIMITATION AND STANDARDS.—

(A) LIMITATION.—To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer pre-licensure educational courses for loan originators.

(B) STANDARDS.—In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.

(d) TESTING OF LOAN ORIGINATORS.—

(1) IN GENERAL.—In order to meet the written test requirement referred to in subsection (b)(5), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by an approved test provider.

(2) QUALIFIED TEST.—A written test shall not be treated as a qualified written test for purposes of paragraph (1) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including—

(A) ethics;

(B) Federal law and regulation pertaining to mortgage origination;

(C) State law and regulation pertaining to mortgage origination;

(D) Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) MINIMUM COMPETENCE.—

(A) PASSING SCORE.—An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(B) INITIAL RETESTS.—An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(C) SUBSEQUENT RETESTS.—After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.

(D) RETEST AFTER LAPSE OF LICENSE.—A State-licensed loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered loan originator.

(e) MORTGAGE CALL REPORTS.—Each mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

#### **SEC. 1506. STANDARDS FOR STATE LICENSE RENEWAL.**

(a) IN GENERAL.—The minimum standards for license renewal for State-licensed loan originators shall include the following:

- (1) The loan originator continues to meet the minimum standards for license issuance.
- (2) The loan originator has satisfied the annual continuing education requirements described in subsection (b).

(b) CONTINUING EDUCATION FOR STATE-LICENSED LOAN ORIGINATORS.—

(1) IN GENERAL.—In order to meet the annual continuing education requirements referred to in subsection (a)(2), a State-licensed loan originator shall complete at least 8 hours of education approved in accordance with paragraph (2), which shall include at least—

- (A) 3 hours of Federal law and regulations;
- (B) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) APPROVED EDUCATIONAL COURSES.—For purposes of paragraph (1), continuing education courses shall be reviewed,

and approved by the Nationwide Mortgage Licensing System and Registry.

(3) CALCULATION OF CONTINUING EDUCATION CREDITS.—A State-licensed loan originator—

(A) may only receive credit for a continuing education course in the year in which the course is taken; and

(B) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) INSTRUCTOR CREDIT.—A State-licensed loan originator who is approved as an instructor of an approved continuing education course may receive credit for the originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(5) LIMITATION AND STANDARDS.—

(A) LIMITATION.—To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer any continuing education courses for loan originators.

(B) STANDARDS.—In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.

## **SEC. 1507. SYSTEM OF REGISTRATION ADMINISTRATION BY FEDERAL AGENCIES.**

(a) DEVELOPMENT.—

(1) IN GENERAL.—The Federal banking agencies shall jointly, through the Federal Financial Institutions Examination Council, and together with the Farm Credit Administration, develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employee of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of enactment of this title.

(2) REGISTRATION REQUIREMENTS.—In connection with the registration of any loan originator under this subsection, the appropriate Federal banking agency and the Farm Credit Administration shall, at a minimum, furnish or cause to be furnished to the Nationwide Mortgage Licensing System and Registry information concerning the employees' identity, including—

- (A) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and
- (B) personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) COORDINATION.—

(1) UNIQUE IDENTIFIER.—The Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each registered loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators.

(2) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY DEVELOPMENT.—To facilitate the transfer of information required by subsection (a)(2), the Nationwide Mortgage Licensing System and Registry shall coordinate with the Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration concerning the development and operation, by such System and Registry, of the registration functionality and data requirements for loan originators.

(c) CONSIDERATION OF FACTORS AND PROCEDURES.—In establishing the registration procedures under subsection (a) and the protocols for assigning a unique identifier to a registered loan originator, the

Federal banking agencies shall make such de minimis exceptions as may be appropriate to paragraphs (1)(A) and (2) of section 1504(a), shall make reasonable efforts to utilize existing information to minimize the burden of registering loan originators, and shall consider methods for automating the process to the greatest extent practicable consistent with the purposes of this title.

**SEC. 1508. SECRETARY OF HOUSING AND URBAN DEVELOPMENT BACKUP AUTHORITY TO ESTABLISH A LOAN ORIGINATOR LICENSING SYSTEM.**

(a) **BACKUP LICENSING SYSTEM.**—If, by the end of the 1-year period, or the 2-year period in the case of a State whose legislature meets only biennially, beginning on the date of the enactment of this title or at any time thereafter, the Secretary determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the requirements of sections 1505 and 1506 and subsection (d) of this section, or does not participate in the Nationwide Mortgage Licensing System and Registry, the Secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the Secretary of loan originators operating in such State as State-licensed loan originators.

(b) **LICENSING AND REGISTRATION REQUIREMENTS.**—The system established by the Secretary under subsection (a) for any State shall meet the requirements of sections 1505 and 1506 for State-licensed loan originators.

(c) **UNIQUE IDENTIFIER.**—The Secretary shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each loan originator licensed by the Secretary as a State-licensed loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

(d) **STATE LICENSING LAW REQUIREMENTS.**—For purposes of this section, the law in effect in a State meets the requirements of this subsection

if the Secretary determines the law satisfies the following minimum requirements:

- (1) A State loan originator supervisory authority is maintained to provide effective supervision and enforcement of such law, including the suspension, termination, or nonrenewal of a license for a violation of State or Federal law.
  - (2) The State loan originator supervisory authority ensures that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry.
  - (3) The State loan originator supervisory authority is required to regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.
  - (4) The State loan originator supervisory authority has a process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.
  - (5) The State loan originator supervisory authority has established a mechanism to assess civil money penalties for individuals acting as mortgage originators in their State without a valid license or registration.
  - (6) The State loan originator supervisory authority has established minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, or has established a recovery fund paid into by the loan originators.
- (e) TEMPORARY EXTENSION OF PERIOD.—The Secretary may extend, by not more than 24 months, the 1-year or 2-year period, as the case may be, referred to in subsection (a) for the licensing of loan originators in any State under a State licensing law that meets the requirements of sections 1505 and 1506 and subsection (d) if the Secretary determines that such State is making a good faith effort to establish a State licensing law that meets such requirements, license mortgage originators under such law, and register such originators with the Nationwide Mortgage Licensing System and Registry.

**SEC. 1509. BACKUP AUTHORITY TO ESTABLISH A  
NATIONWIDE MORTGAGE LICENSING AND REGISTRY  
SYSTEM.**

If at any time the Secretary determines that the Nationwide Mortgage Licensing System and Registry is failing to meet the requirements and purposes of this title for a comprehensive licensing, supervisory, and tracking system for loan originators, the Secretary shall establish and maintain such a system to carry out the purposes of this title and the effective registration and regulation of loan originators.

**SEC. 1510. FEES.**

The Federal banking agencies, the Farm Credit Administration, the Secretary, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.

**SEC. 1511. BACKGROUND CHECKS OF LOAN ORIGINATORS.**

(a) ACCESS TO RECORDS.—Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide access to all criminal history information to the appropriate State officials responsible for regulating State-licensed loan originators to the extent criminal history background checks are required under the laws of the State for the licensing of such loan originators.

(b) AGENT.—For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (a), the Conference of State Bank Supervisors or a wholly owned subsidiary may be used as a channeling agent of the States for requesting and distributing information between the Department of Justice and the appropriate State agencies.

## **SEC. 1512. CONFIDENTIALITY OF INFORMATION.**

(a) **SYSTEM CONFIDENTIALITY.**—Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 1509, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) **NONAPPLICABILITY OF CERTAIN REQUIREMENTS.**—Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—

- (1) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or
- (2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or the Secretary with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(c) **COORDINATION WITH OTHER LAW.**—Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of such provision to the extent State law provides less confidentiality or a weaker privilege.

(d) **PUBLIC ACCESS TO INFORMATION.**—This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement



actions against, loan originators that is included in Nationwide Mortgage Licensing System and Registry for access by the public.

### **SEC. 1513. LIABILITY PROVISIONS.**

The Secretary, any State official or agency, any Federal banking agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 1509, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

### **SEC. 1514. ENFORCEMENT UNDER HUD BACKUP LICENSING SYSTEM.**

(a) **SUMMONS AUTHORITY.**—The Secretary may—

- (1) examine any books, papers, records, or other data of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508; and
- (2) summon any loan originator referred to in paragraph (1) or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the Secretary or any delegate of the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of this title.

(b) **EXAMINATION AUTHORITY.**—

- (1) **IN GENERAL.**—If the Secretary establishes a licensing system under section 1508 for any State, the Secretary shall appoint examiners for the purposes of administering such section.

- (2) POWER TO EXAMINE.—Any examiner appointed under paragraph (1) shall have power, on behalf of the Secretary, to make any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508 whenever the Secretary determines an examination of any loan originator is necessary to determine the compliance by the originator with this title.
- (3) REPORT OF EXAMINATION.—Each examiner appointed under paragraph (1) shall make a full and detailed report of examination of any loan originator examined to the Secretary.
- (4) ADMINISTRATION OF OATHS AND AFFIRMATIONS; EVIDENCE.—In connection with examinations of loan originators operating in any State which is subject to a licensing system established by the Secretary under section 1508, or with other types of investigations to determine compliance with applicable law and regulations, the Secretary and examiners appointed by the Secretary may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.
- (5) ASSESSMENTS.—The cost of conducting any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508 shall be assessed by the Secretary against the loan originator to meet the Secretary's expenses in carrying out such examination.

(c) CEASE AND DESIST PROCEEDING.—

- (1) AUTHORITY OF SECRETARY.—If the Secretary finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this title, or any regulation thereunder, with respect to a State which is subject to a licensing system established by the Secretary under section 1508, the Secretary may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from

committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as the Secretary may specify in such order. Any such order may, as the Secretary deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Secretary may specify, with such provision or regulation with respect to any loan originator.

(2) HEARING.—The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Secretary with the consent of any respondent so served.

(3) TEMPORARY ORDER.—Whenever the Secretary determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest prior to the completion of the proceedings, the Secretary may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as the Secretary deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Secretary determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Secretary or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(4) REVIEW OF TEMPORARY ORDERS.—

(A) REVIEW BY SECRETARY.—At any time after the respondent has been served with a temporary cease and desist order pursuant to paragraph (3), the respondent may apply to the Secretary to have the order set aside,

limited, or suspended. If the respondent has been served with a temporary cease and desist order entered without a prior hearing before the Secretary, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Secretary shall hold a hearing and render a decision on such application at the earliest possible time.

(B) JUDICIAL REVIEW.—Within—

(i) 10 days after the date the respondent was served with a temporary cease and desist order entered with a prior hearing before the Secretary; or

(ii) 10 days after the Secretary renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease and desist order entered without a prior hearing before the Secretary, the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease and desist order entered without a prior hearing before the Secretary may not apply to the court except after hearing and decision by the Secretary on the respondent's application under subparagraph (A).

(C) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under subparagraph (B) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

(5) AUTHORITY OF THE SECRETARY TO PROHIBIT PERSONS FROM SERVING AS LOAN ORIGINATORS.—In any cease and desist proceeding under paragraph (1), the Secretary may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as the Secretary shall determine, any person who has violated this title or regulations thereunder, from acting as a loan originator if the conduct of

that person demonstrates unfitness to serve as a loan originator.

**(d) AUTHORITY OF THE SECRETARY TO ASSESS MONEY PENALTIES.—**

(1) **IN GENERAL.**—The Secretary may impose a civil penalty on a loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508, if the Secretary finds, on the record after notice and opportunity for hearing, that such loan originator has violated or failed to comply with any requirement of this title or any regulation prescribed by the Secretary under this title or order issued under subsection (c).

(2) **MAXIMUM AMOUNT OF PENALTY.**—The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$25,000.

**SEC. 1515. STATE EXAMINATION AUTHORITY.**

In addition to any authority allowed under State law a State licensing agency shall have the authority to conduct investigations and examinations as follows:

(1) For the purposes of investigating violations or complaints arising under this title, or for the purposes of examination, the State licensing agency may review, investigate, or examine any loan originator licensed or required to be licensed under this title, as often as necessary in order to carry out the purposes of this title.

(2) Each such loan originator shall make available upon request to the State licensing agency the books and records relating to the operations of such originator. The State licensing agency may have access to such books and records and interview the officers, principals, loan originators, employees, independent contractors, agents, and customers of the licensee concerning their business.

(3) The authority of this section shall remain in effect, whether such a loan originator acts or claims to act under any licensing or registration law of such State, or claims to act without such authority.

(4) No person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

#### **SEC. 1516. REPORTS AND RECOMMENDATIONS TO CONGRESS.**

(a) **ANNUAL REPORTS.**—Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall submit a report to Congress on the effectiveness of the provisions of this title, including legislative recommendations, if any, for strengthening consumer protections, enhancing examination standards, streamlining communication between all stakeholders involved in residential mortgage loan origination and processing, and establishing performance based bonding requirements for mortgage originators or institutions that employ such brokers.

(b) **LEGISLATIVE RECOMMENDATIONS.**—Not later than 6 months after the date of enactment of this title, the Secretary shall make recommendations to Congress on legislative reforms to the Real Estate Settlement Procedures Act of 1974, that the Secretary deems appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs.

#### **SEC. 1517. STUDY AND REPORTS ON DEFAULTS AND FORECLOSURES.**

(a) **STUDY REQUIRED.**—The Secretary shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as is available.

(b) **PRELIMINARY REPORT TO CONGRESS.**—Not later than 6 months after the date of enactment of this title, the Secretary shall submit to Congress a preliminary report regarding the study required by this section.

(c) **FINAL REPORT TO CONGRESS.**—Not later than 12 months after the date of enactment of this title, the Secretary shall submit to Congress a final report regarding the results of the study required by this section, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to provide targeted assistance to populations with the highest risk of potential default or foreclosure.